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COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)

Joint Petition of Western Massachusetts)
Electric Company, New England Power)
Company and Fitchburg Gas and Electric) D.T.E. 00-68
Light Company for Approval of Generation)
Asset Divestiture)

)

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JOINT PETITION FOR APPROVAL OF ASSET DIVESTITURE

I. INTRODUCTION

1. Western Massachusetts Electric Company ("WMECO"), New England Power Company ("NEP") and Fitchburg Gas and Electric Light Company ("FG&E") (collectively, the "Petitioners") hereby petition the Department of Telecommunications and Energy (the "Department") for approval of the sale of the Petitioners' respective generation interests in Millstone Units 1, 2, and 3 ("Millstone"), located in Waterford, Connecticut, to Dominion Nuclear Connecticut, Inc. ("DNC"). Millstone Units 2 and 3 are operational 875 megawatt ("MW") and 1,154 MW nuclear power units, respectively. Millstone Unit 1 has been permanently shut down and is in the process of being decommissioned. As further described below, WMECO has an ownership interest in Millstone Units 1, 2 and 3; NEP and FG&E have no ownership interest in Millstone Units 1 or 2, but each has an ownership interest in Millstone Unit 3.

2. Petitioners are the three Massachusetts electric companies requiring Department approval to divest their Millstone generating assets and requiring a Department determination

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necessary to qualify the divested assets for Exempt Wholesale Generator ("EWG") status under Section 32 of the Public Utility Holding Company Act of 1935 ("PUHCA"). (1)

3. WMECO is an electric company providing retail electric service to approximately 200,000 customers in 59 communities in western Massachusetts and is subject to the regulatory jurisdiction of the Department. WMECO is a wholly-owned subsidiary of Northeast Utilities ("NU") and is headquartered at 164 Brush Hill Avenue, West Springfield, Massachusetts. WMECO has a 19 percent ownership interest in each Millstone Units 1 and 2, and a 12.24 percent interest in Millstone Unit 3.

4. NEP is a generating and transmission company providing wholesale electric service in Massachusetts and, as such, is subject to a limited degree of regulatory jurisdiction by the Department. NEP is headquartered at 25 Research Drive, Westborough, Massachusetts, and has a 16.21 percent ownership interest in Millstone Unit 3. The NEP percentage of Millstone Unit 3 includes the 4.01 percent formerly held by Montaup Electric Company ("Montaup"). Earlier this year, the corporate parent of NEP, National Grid USA, acquired Eastern Utilities Associates, the parent of Montaup. Montaup was later merged into NEP.

5. FG&E is a combination gas and electric company providing electric distribution to approximately 25,000 customers in north-central Massachusetts. FG&E is a subsidiary of Unitil

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Corporation. FG&E is headquartered at 6 Liberty Lane West, Hampton, New Hampshire. FG&E has a 0.22 percent ownership interest in Millstone Unit 3.

6. In support of this Joint Petition, the Petitioners append the following attachments:

Attachment 1

Prefiled joint testimony of Richard A. Soderman, Director of Regulatory Policy and Planning for Northeast Utilities Service Company and its operating companies and affiliates, including WMECO; and Richard M. Kacich, Director of Business Services for Northeast Nuclear Energy Company ("NNECO"), a wholly owned subsidiary of NU ("Soderman/Kacich Testimony").

Attachment 2

Prefiled testimony of Paul M. Dabbar, Vice President of the Global Energy Investment Banking Group at J.P. Morgan Securities, Inc. ("J.P. Morgan") ("Dabbar Testimony").

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Attachment 3

Prefiled testimony of Terry L. Schwennesen, Vice President and Director of Generation Investments for the New England Power Company ("NEP") ("Schwennesen Testimony").

Attachment 4

Prefiled testimony of Mark H. Collin, Treasurer FG&E ("Collin Testimony").

Attachment 5

Purchase and Sale Agreement entered into on August 7, 2000 between the Petitioners and other owners of Millstone, and Dominion Resources, Inc. ("Dominion") ("PSA").

II. GOVERNING AUTHORITY

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7. The Department has general supervisory authority of all gas and electric companies under General Laws, Chapter 164, §76. Section 96 of Chapter 164 also provides review authority with respect to the sale of electric company assets. Under Section 96 any sale must be "consistent with the public interest." Chapter 164, § 100, provides for Department review of the sale of property of a company engaged both in the business of an electric company and gas company (i.e., FG&E) subject to the standard in Section 96.

8. The Millstone assets are being sold pursuant to the terms of the PSA dated as of August 7, 2000. Approval is requested pursuant to G.L. c. 164, §§ 76, 96, and 100. See, e.g., Boston Edison Company and Commonwealth Electric Company, D.T.E. 98-119/D.T.E. 98-126, p. 5 (March 22, 1999) ("sale process is equitable and maximizes the value of the existing generation facilities being sold" The sale is also consistent with each of the Petitioners' Restructuring Plans or Restructuring Plan Settlements (see, D.T.E. 97-120 (WMECO), D.P.U./D.T.E. 96-25 (NEP) and D.T.E. 97-115 (FG&E)).

III. MILLSTONE AUCTION

9. Millstone was offered for sale in a public auction. The auction was conducted pursuant to Connecticut General Act 98-28, 'An Act Concerning Electric Restructuring' (Conn. Gen. Stat. Section 16-244f) (the "CT Act"). (2) Each of the owners, except the Massachusetts Municipal Wholesale Electric Company and

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Central Vermont Public Service Company, have agreed to sell their ownership shares in Millstone to DNC. (3) (4)

10. Pursuant to Section 6(b) of the CT Act, the Connecticut Department of Public Utility Control ("CT DPUC") selected J.P. Morgan, a nationally prominent investment banking firm, to conduct the auction. The auction was supervised by the CT DPUC's specially-appointed Utility Operations Management Analysis ("UOMA") auction team.

11. The auction commenced on May 5, 2000 with the distribution of J.P. Morgan's Offering Memorandum describing the nuclear generation assets and associated property to be sold. Neither NU nor Consolidated Edison, Inc., with whom NU has entered into a Agreement and Plan of Merger, participated in the auction as bidders. In addition, a Nuclear Auction Protocol was put in place to govern employee involvement during the auction and negotiation process with J.P. Morgan and UOMA and to protect the confidentiality of the bidders and bids in the various stages of the auction process.

12. In conducting the auction, J.P. Morgan used a confidential process, consisting of an initial identification of potential bidders, followed by the bidder due diligence procedure, in which bidders were given access to an electronic data room. Bidders were allowed to submit confidential questions and participate in individual pre-bid meetings. The binding bids ultimately submitted were subject only to on-site verification.

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J.P. Morgan chose the winning bidder. The auction process is described in detail in Attachment 2, the Dabbar Testimony.

13. On August 7, 2000, J.P. Morgan announced that Dominion Resources, Inc. ("Dominion") was the winning bidder. Dominion has advised the Petitioners that as permitted by the PSA it will assign its rights under the PSA to DNC, an indirect, wholly-owned, special-purpose subsidiary of Dominion Energy, Inc., which in turn is a wholly-owned subsidiary of Dominion. Dominion is among the largest fully-integrated natural gas and electric power providers in the United States with over \$24 billion in assets, over \$8 billion in annual revenue, and over \$2 billion in annual operating cash flow. In addition, Virginia Power, a subsidiary of Dominion and the licensed owner and operator of the North Anna and Surry nuclear stations in Virginia, has an outstanding record for safe nuclear plant operation.

14. In reviewing a petition to divest generating assets, the Department considers the consistency of the proposed transaction with the company's Restructuring Plan (including any Restructuring Plan Settlement) and Chapter 164 of the Acts of 1997 (the "Restructuring Act"). The sale process used by J.P. Morgan in this case meets the standard that was applied in Boston Edison Company and Commonwealth Electric Company, D.T.E. 98-119/D.T.E. 98-126, p. 5 (March 22, 1999); specifically, that the "sale process is equitable and maximizes the value of the existing generation facilities being sold." In that case, the

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Department stated that a sale process is deemed equitable and structured to maximize the value of the existing generation facilities being sold if the company establishes that it used a "competitive auction or sale" that ensured "complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale." *Id.* As stated above and detailed in the Dabbar Testimony, the sale was accomplished through a competitive auction that provided complete access to all data by all participants. It was conducted by J.P. Morgan, under the supervision of a unit of the CT DPUC, the UOMA for the express purpose of ensuring fair and equitable treatment and to maximize the value of the assets being sold. In Attachment 1 to this Petition, witnesses Soderman and Kacich testify to the successful conclusion of the auction as evidenced by the PSA. The transfer of NEP's interest in Millstone Unit 3 also carries out NEP's obligation under its Restructuring Plan Settlement, approved by the Department in D. P. U. /D. T. E. 96-25-B that NEP "will endeavor to sell, lease, assign, or otherwise dispose of its minority shares of nuclear units or entitlements on terms that will assign ongoing operating costs and responsibility to a nonaffiliated third party." This is described further in the Schwennesen Testimony.

15. The Petitioners have also shown that the sale is consistent with the public interest, as required by G.L. c. 164, § 96. In addition, the sale is in the public interest because it is consistent with the policies set forth by the Department in

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D.P.U. 96-100, including the divestiture of generating assets and the furtherance of retail competition and customer choice in Massachusetts.

16. As a result of the sale of each Petitioner's interest in Millstone, the Petitioners have mitigated transition costs as required by G.L. c. 164, §§1, 1G.

17. The findings sought by the Petitioners in connection with the sale of Millstone assets parallel those made by the Department in Western Massachusetts Electric Company, D.T.E. 99-29 (June 30, 1999), p. 15. Petitioners have not proposed and do not seek at this time any adjustment to their Transition Charges (as the term is defined in Chapter 164 of the General Laws). Such adjustments will be sought, as appropriate, in separate requests to be filed by each Petitioner or its retail affiliate at some point in the future. (5) (6)

18. The Petitioners' request in this proceeding is entirely consistent with the requests of other electric companies for approval of asset divestitures that have been granted by the Department. See, Western Massachusetts Electric Company, D.T.E. 99-74 (2000); Western Massachusetts Electric Company, D.T.E. 99-29 (1999); Boston Edison Company, D.T.E. 98-119 (1999); Fitchburg Gas and Electric Light Company, D.T.E. 98-121/99-58 (1999); Cambridge Electric Light Company, Commonwealth Electric Company and Canal Electric Company, D.T.E. 98-78 (1998); Boston Edison Company, D.T.E. 97-113; and Massachusetts Electric

Company, D. T. E. 97-94 (1998).

IV. EWG STATUS

19. As a condition to closing the Petitioners' sale to DNC, DNC must obtain the determination of the Federal Energy Regulatory Commission ("FERC") that divested assets qualify as EWG under Section 32 of PUHCA. EWG status is critical to Dominion because it allows ownership and operation of the assets without regulation as a public utility company under PUHCA. Without EWG status the Millstone assets would be virtually unmarketable.

20. FERC's EWG determination must be based, in part, on a determination that the purchased facilities are "eligible facilities." (7) If the cost of such facilities (other than costs recovered through wholesale rates) was reflected in the seller's retail rates on October 24, 1992, FERC's determination that they are "eligible facilities" depends, in part, on a specific determination by the state regulatory commission having jurisdiction over such retail rates. Because a portion of the cost associated with the assets to be sold was reflected in each Petitioner's retail rates as of October 24, 1992, and because the Department had jurisdiction over such rates, a specific determination must be obtained from the Department in order to obtain the required "eligible facilities" findings from FERC.

21. The specific determination required of the Department is that allowing the divested assets to become "eligible

facilities":

- (a) will benefit consumers;
- (b) is in the public interest; and
- (c) does not violate state law. (8)

22. The determination set forth in the prior enumerated paragraph should be made for several reasons. First, consumers will benefit because additional generating capacity will be available for sale in the competitive market. Because the competitive market is expected to function more efficiently than the rate-regulated system of generation, consumers should ultimately benefit through lower prices. This benefit has been recognized by the Department in the context of electric utility restructuring in Massachusetts. Second, designation of the facilities as eligible facilities is in the public interest because it supports the Commonwealth's stated goals to eliminate the vertical integration of the electric utility industry and to make electricity generation a competitive function. Third, such designation does not violate state law. On the contrary, the sale is completely consistent with the Restructuring Act, which encourages the development of a competitive generation market.

23. The determination herein requested under Section 32 of PUHCA are identical to those requested by electric companies and granted by the Department in other asset divestiture

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proceedings. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-29 (1999); Western Massachusetts Electric Company, D.T.E. 99-74 (2000).

24. Apart from the Department's approval in this proceeding, the Millstone sale is contingent on obtaining additional regulatory approvals. Action by the Nuclear Regulatory Commission, FERC, Department of Justice, Internal Revenue Service, Securities and Exchange Commission, and other state public utility commissions will be obtained, as necessary.

25. The Petitioners respectfully request a decision by the Department before the end of calendar-year 2000 to allow the Petitioners to include their interests in the sale of the Millstone assets on a timely basis. The Department's approval, and that of the other state commissions considering this transaction must be issued before Dominion can file its FERC application for EWG status. Because the FERC process is likely to take up to 60 days, and because the parties are targeting a closing on or about April 1, 2001, a decision from the Department is needed by December 31, 2000. The Petitioners request that the Department act on and approve this Petition contemporaneously with CL&P's and Public Service of New Hampshire's "Joint Petition for Findings Under Section 32(c) of the Public Utility Holding Company Act of 1935" filed on this date (see D.T.E. 00-69), which would facilitate a simultaneous closing on all Millstone ownership interests being sold.

V. FINDINGS

WHEREFORE, Western Massachusetts Electric Company, New England Power Company and Fitchburg Gas and Electric Light Company respectfully request the Department to approve the sale of the Millstone assets as owned by each Petitioner and make the following findings and determination:

A. The sale process by which the Millstone assets were offered for sale ensured complete, uninhibited non-discriminatory access to all data and information by all parties seeking to participate in the auction and therefore was equitable.

B. The divestiture process maximized the value of the generating assets.

C. The sale of the Millstone assets is consistent with each Petitioner's Restructuring Plan and/or Restructuring Plan Settlement, and each Petitioner has maximized the value for its respective customers.

D. Any and all authorizations that may be required under Massachusetts law for the sale of Petitioners' Millstone assets, as described herein, have been satisfied.

E. For the Millstone assets to become "eligible facilities" under PUHCA, § 32(c), because of the sale of the assets: (1) will benefit consumers; (2) is in the public interest; and (3)

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does not violate state law.

The Petitioners also respectfully request that the Department grant any other approvals and make any other findings that may be necessary or appropriate to facilitate the sale of the assets as described herein.

Respectfully submitted,

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1. 1 The other Massachusetts owner divesting its share of Millstone 3 is the Chicopee Municipal Lighting Plant.

2. 2 The owners of Millstone Units 1 and 2 are:

The Connecticut Light and Power Company ("CL&P") (81 percent);
and

WMECO (19 percent).

The owners of Millstone Unit 3 are:

CL&P (52.93 percent);

WMECO (12.24 percent);

Public Service Company of New Hampshire (2.85 percent);

The United Illuminating Company (3.69 percent);

NEP (16.21 percent);

Central Maine Power Company (2.50 percent);

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Chicopee Municipal Lighting Plant (1.35 percent);

Connecticut Municipal Electric Cooperative (1.09 percent);

Vermont Electric Generation and Transmission Cooperative (0.35 percent);

FG&E (0.22 percent);

Village of Lyndonville [VT] Electric Cooperative (0.05 percent);

Central Vermont Public Service Company (1.73 percent); and

Massachusetts Municipal Wholesale Electric Company (4.80 percent).

3.3 In November 1999, NEP and Montaup entered into settlement agreements with CL&P, WMECO and NU addressing litigation and arbitration filed by NEP and Montaup against those companies for damages related to an earlier shutdown of Millstone Unit 3. Montaup merged into NEP effective May 1, 2000 and NEP is successor in interest to Montaup's settlement agreement. Under the terms of the settlement, NU agreed to include NEP's (including Montaup's) 16.21 percent minority interest in Millstone Unit 3 in the auction to be conducted pursuant to the CT Act. As part of the settlement, NEP's proceeds from the sale and contribution to the decommissioning funds were set at fixed

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amounts and NU agreed to indemnify NEP from any residual liabilities or costs resulting from the sale, including any requirement to purchase power from the unit. This settlement is described further in the Schwennesen Testimony.

4. 4 In December 1999, FG&E received approval from the Department for its entitlements sale to Select Energy, Inc. of Connecticut ("Select"). Fitchburg Gas and Electric Light Company, D.T.E. 99-58 (1999). The Department approved the entitlements sale as a final divestiture of FG&E's assets, including its interest in Millstone Unit 3. Id. As part of this sale, FG&E retained its ability to recover the proceeds of any claims against CL&P, WMECO and NU as a result of an earlier shutdown of Millstone Unit 3. In addition, FG&E agreed that any proceeds of the actual sale of its ownership interest in Millstone Unit 3 would flow to Select, in consideration for Select's assumption of FG&E's obligation for the on-going costs associated with Millstone Unit 3.

Shortly thereafter, FG&E entered into a settlement agreement with NU addressing litigation and arbitration claims filed by FG&E against those companies for damages related to the shutdown of Millstone Unit 3. Under the terms of the settlement, NU agreed to include FG&E's minority interest in Millstone Unit 3 in the auction process to be conducted pursuant to the CT Act. NU also agreed to pay FG&E certain fixed amounts for settlement of FG&E's claims, both at the time of settlement and following the closing of the Millstone Unit 3 sale. NU agreed to indemnify

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FG&E from any residual liabilities or costs resulting from the sale, including any requirement to purchase power from the unit. This is described further in the Collin Testimony.

5. 5 In accordance with the Restructuring Settlement approved by the Department in D.P.U./D.T.E. 96-25-B, NEP's Contract Termination Charge (the "CTC") is a FERC-approved rate which is annually reconciled to reflect actual costs and/or proceeds recovered by NEP. This is described further in the Schwennesen Testimony.

6. 6 In accordance with FG&E's Restructuring Plan approved by the Department in D.T.E. 97-115/98-120 (1999), FG&E's Transition Charge is reconciled annually to reflect actual costs and/or proceeds recovered by FG&E. This is described further in the Collin Testimony. WMECO's Transition Charge is also reconciled annually to reflect actual costs and/or proceeds pursuant to its approved Restructuring Plan. See D.T.E. 97-120 (1999).

7. 7 Section 32(a)(2) of PUHCA defines "eligible facility" as"

a facility, wherever located, which is either (A) used for the generation of

electric energy exclusively for sale at wholesale, or (B) used for the

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generation of electric energy and leased to one or more public utility

companies, Provided, however, That any such lease shall be treated as a sale

of electric energy at wholesale for purposed of sections 824d and 834e of Title

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8. 8 In pertinent part, Section 32(c) of PUHCA (15 U.S.C.A. § 79z-5a(c)) provides as follows:

(c) State Consent for Existing Rate-Based Facilities. If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make specific determination that allowing such facility to be an

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eligible facility (1) will benefit customers, (2) is in the public interest, and (3) does not violate State law; Provided, that in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company;